



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012-2713

LLOYD W. PELLMAN  
County Counsel

October 23, 2002

TDD  
(213) 633-0901  
TELEPHONE  
(213) 974-1904  
TELECOPIER  
(213) 687-7300

Syn. No. 46-B  
6/26/01

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE BRATHWAITE BURKE  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN   
County Counsel

RE: **Supplemental Report on Reduction of Reliance on Outside Counsel**

This is to provide a further report on our study of four particular areas of litigation - contract litigation, law enforcement, general litigation, and personnel/labor relations cases - to determine whether reducing use of outside counsel might be beneficial and cost effective to the County.

Our further review confirms that in these areas the conclusion set forth in our previous report to your Board dated September 7, 2001 also holds true, that in areas of litigation in which outside law firms are utilized, such contracting is more beneficial to the County in terms of feasibility and cost effectiveness than utilization of in-house counsel.

It also reconfirms the findings and conclusions of the 1998 management audit of the County Counsel's Office by Barrington-Wellesley/AltmanWeil that the County Counsel's "process for determining which cases to retain in-house and which to refer to outside counsel is sound and in keeping with both [their recommended analysis for determining what to retain in-house and what to refer outside] and with processes used in other well managed law departments." The auditors had no recommendations for improvements or modifications to our processes for allocation of work between in-house and outside counsel. (Barrington-Wellesley/Altman Weil Final Report, pages V-38 and V-39)

### **Construction Litigation**

With regard to construction litigation, our review of the variety of factors involved in such litigation supports the determination to continue the contracting out of major construction litigation. In summary, those factors include the following considerations:

- Obtaining specialized attorney expertise on an as-needed basis is more effective and efficient than trying to retain such expertise in-house and maintaining "idle capacity" when such expertise is not needed.
- Meeting the fluctuating need for construction litigation services by contracting for such services is more efficient than attempting to maintain the necessary attorney and support staff in-house.
- Purchasing electronic document management and storage hardware and software, which may not be needed when the litigation is concluded and which may be technologically superseded when needed for subsequent litigation, is less efficient than contracting for litigation services that include the use of such hardware and software.
- Avoiding disruption to other client services caused by frequent travel supports the use of outside rather than in-house counsel for major construction litigation.
- Acquiring space for additional litigation staff when such space is not currently available in the Kenneth Hahn Hall of Administration, and locating such staff at a satellite location is less efficient than contracting for such litigation services when needed.

A detailed analysis of the factors and considerations involved in determining whether to contract out major construction litigation is enclosed.

### **Law Enforcement and General Litigation**

In the areas of law enforcement and general litigation, our review also indicates that the current allocation of cases between in-house and outside counsel is sound and cost effective and should be continued. Again, this is consistent with the findings and conclusions of the auditors in their 1998 report. The factors and considerations involved in this determination include the following:

- Effective Legal Representation - The current balance of cases assigned to in-house counsel and outside counsel allows the County Counsel's Office to provide timely and effective legal representation as well as to provide house counsel advice and services to the Board of Supervisors and other County officers and departments.
- Personnel considerations - Additional attorneys, paralegals and support staff would be needed to handle in-house any significant portion of the litigation currently assigned to outside counsel.
- Space considerations - Additional space and equipment to house and support the attorneys, paralegals and support staff necessary to handle more litigation in-house would be required.
- Effect on litigation outcomes - Because there is not currently space for more attorneys, paralegals and support staff in the Hall of Administration, in-house caseloads would have to be increased, thereby decreasing the quality of litigation and litigation results.

A more detailed analysis of the factors and considerations involved in determining whether to contract out cases in the areas of law enforcement and general litigation is enclosed.

**Personnel/Labor Relations Litigation**

Our further review of the allocation of cases in the areas of personnel and labor relations between in-house and outside counsel confirmed that the same factors and considerations involved in the analysis of law enforcement and general litigation applied (e.g., levels of hourly rates, attorney and legal support staffing, office space and equipment) and support the conclusion that the current allocations and the processes for determining such allocations are appropriate.

As in the case of law enforcement and general litigation, hourly rate comparisons might be taken to suggest that more personnel and labor relations cases should be assigned to outside counsel in view of the predominant \$120 per hour billing rate for outside counsel as compared to considerably higher rates charged to County departments for a Deputy or Senior Deputy County Counsel. However, in both the personnel and labor relations areas there are highly sensitive and important policy-related cases in which assignment to in-house attorneys, who also have ongoing advisory relationships with the departments involved and are familiar with the historical and institutional factors often involved in such cases, will be more beneficial and cost effective in terms of litigation outcomes and relationships with client departments.

As of June 30, 2002, the County had a total of 79 cases in the areas of personnel and labor relations assigned in-house and 201 cases assigned to outside counsel. As of June 30, 2001 there were 75 cases assigned in-house and 243 to outside counsel. Thus, total case assignments allocated in-house in the past year have increased by approximately 5 percent while assignments to outside counsel have decreased by 17.3 percent.

Accordingly, it is our conclusion that our allocation of cases between in-house and outside counsel in the areas of personnel and labor relations continues to be appropriate and cost effective.

LWP:DMM:mr

Enclosures

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens  
Executive Officer, Board of Supervisors

## **CONSTRUCTION LITIGATION: CONTRACTING OUT ANALYSIS**

### **Summary**

As discussed in more detail below, the following considerations support the decision to contract out major construction litigation:

- Obtaining specialized attorney expertise on an as-needed basis is more effective and efficient than trying to retain such expertise in-house and maintaining "idle capacity" when such expertise is not needed.
- Meeting the fluctuating need for construction litigation services by contracting for such services is more efficient than attempting to maintain the necessary attorney and support staff manpower in-house.
- Purchasing electronic document management and storage hardware and software, which may not be needed when the litigation is concluded and which may be technologically superseded when needed for subsequent litigation, is less efficient than contracting for litigation services that include the use of such hardware and software.
- Avoiding the disruption to client services caused by frequent travel supports the decision to contract for such services.
- Acquiring space for additional litigation staff when such space is not currently available in the Kenneth Hahn Hall of Administration, and locating such staff at a satellite location is less efficient than contracting for such litigation services when needed.

### **Characteristics of Construction Litigation**

Major construction litigation will be defined for purposes of this analysis as litigation in which the exposure is at least one million dollars. This litigation generally involves claims for additional compensation from the General Contractor, with whom the County has a contract, and one or more major subcontractors who contracted with the General Contractor.

The number of major construction lawsuits on County projects is directly related to the number of major County construction projects, which in turn is directly related to the amount of funds available to the County for such construction. During good economic times the State and its taxpayers are more willing to finance construction through grants and bond issues than in poor economic times. During good economic times the County's increased property and sales tax revenue is available to pay debt service to finance major construction projects.

The County's major construction litigation generally arises out of the design and construction of a building, rather than infrastructure projects such as roads and flood control facilities. The duration of the design process prior to construction may be as long as 18 months

to two years. Construction may occur over the course of two to four or more years depending on the size and complexity of the building.

Therefore, major construction litigation often requires discovery of documents generated during a period as long as six or more years of design and construction.

### **Required Attorney Core Competencies**

Construction litigation generally includes claims for additional direct costs incurred for labor and materials, and additional indirect costs such as extended overhead costs incurred due to alleged delay in completion.

In addition to knowing the construction process and obligations of owner and contractor (which is available in-house), attorneys who handle major construction litigation usually need access to expertise in corporate accounting, construction accounting and financing, and insurance and bonding coverage. While such expertise can be obtained through expert consultants, it is more effective and efficient for an attorney with such expertise to question a witness or argue an issue without having to rely on an expert's coaching/assistance.

Often, the degree to which such areas of specialization may be required cannot be predicted at the outset of litigation. For instance, during recent litigation the County's litigation attorneys became aware that the plaintiff General Contractor corporation had been acquired by another corporation during the performance of the contract. This information led to the discovery of and the need to analyze financial and corporate securities documents related to that acquisition in the face of strenuous opposition and claims of confidentiality. The law firm was able to utilize its in-house expertise in these areas.

An intimate knowledge of County policy and the nuances of dealing with the County bureaucracy generally is not required for major construction litigation. The litigation attorneys' focus can be limited generally to the small group of County employees and consultants who worked directly on the project.

### **Conclusion**

Contracting out litigation to obtain specialized attorney expertise on an as-needed basis is more effective and efficient than trying to retain such expertise in-house and maintaining "idle capacity" when such expertise is not needed.

### **Demand Capacity**

As noted above, the number of the County's major construction lawsuits is unpredictable and directly influenced by the economy. During the 1980's and early 1990's the County did not have more than one major construction lawsuit at a time. Between 1997 and 2000 the County had three such lawsuits at the same time.

The level of effort required to prosecute or defend a major construction lawsuit fluctuates throughout the duration of the litigation. For example, the average monthly level of effort required for the law firm who handled a recent lawsuit with a duration of 55 months, from January, 1997 through July, 2001, was as follows:

- Each month of the first two years was a fairly even level of effort. Initial document discovery required paralegal services to organize/code documents; 2 attorneys; 1-3 paralegals.
- Non-expert deposition discovery doubled attorney/paralegal effort for the next 8-10 month period; 4-6 attorneys and paralegals.
- Expert discovery, preparation for mediation and trial doubled the effort from the previous level for the next 6-month period; 12-14 attorneys and 8-11 paralegals.
- After a tentative settlement was reached, working out the details of the settlement with the many parties involved took an average of 2 attorneys and one paralegal.

The fluctuation in manpower levels and corresponding attorneys fees and costs are depicted in the attached tables.

Using 1767 hours per year as a productive work rate, the total number of attorney hours and paralegal hours claimed for the three major lawsuits which overlapped between 1997 and 2000 averaged a constant level of effort for four attorneys and three paralegals throughout the 3 ½ year period.

### Conclusion

The fluctuation in the need for construction litigation services supports the decision to contract for such services rather than attempt to maintain the necessary manpower in-house.

### Document Control and Storage

Construction litigation involves a large amount of documents generated by many parties during the design and construction of the project. For example, a recent case with an exposure of \$8 million included 500,000 pages of documents. A recent smaller case of \$3.5 million in exposure includes an estimated 90,000 pages of relevant County project office documents, not including drawings. This estimate does not include documents of the contractor or subcontractor(s).

The universe of documents must be organized, coded and maintained for litigation purposes. This effort generally requires electronic imaging of all relevant documents and a methodology for electronically locating those documents.

This effort requires a network and two servers dedicated to the documents of each case if more than one attorney/paralegal is working on the case. A network level license for a coding/management system like Concordance is \$7-10,000. A network level license for image viewing software like Doculex or Ipro is \$2,000.

One server is needed for storage of images of documents with Bates stamp numbers, e.g., pdf or tif files. These documents are scanned onto compact disks which are copied onto a hard drive. This becomes a static data base from which unmodified documents may be retrieved.

Another server is needed for a data base of documents which contains full Optical Character Reader text of all documents, document coding, data fields, "hot" documents. This is not a static data base. Coding and fields change as needed for litigation purposes. This data base must be continuously backed up because of its criticality; it is largely attorney work product.

### **Conclusion**

Electronic document management and storage requires an investment in hardware and software which may not be needed when the litigation is concluded and which may be technologically superseded when needed for subsequent litigation. This supports the decision to contract for such services.

### **Travel Considerations**

Contractors and major subcontractors frequently are not locally based. Construction industry management and supervisory personnel are highly mobile and move from project to project. Consequently, document production and depositions frequently require out-of-town travel of attorneys and paralegals. Travel includes non-billable, non-productive hours. In addition, if in-house staff were required to travel extensively they would not be available to their County clients on other matters.

### **Conclusion**

The potential for frequent travel and the disruption to serving other County clients supports the decision to contract for such services.

### **Space Considerations**

Additional attorneys, paralegals and support staff would be needed to handle this additional litigation in-house. Currently, there is no space for additional attorney and paralegal work space. If additional space could be obtained in the Kenneth Hahn Hall of Administration, estimated costs for each additional attorney office and paralegal bay would be \$3,000 per month. Additional furnishings for each attorney and paralegal are an estimated one-time cost of \$6,000 and \$4,500 for each. Costs for computers, printers, utilities, office supplies are estimated to be \$1,000 per month for each attorney and \$500 per month for each paralegal.

Space for simultaneous multiple depositions with 6-8 parties/counsel each would require at least two additional conference rooms at an estimated cost of \$1,000 per month if space could be obtained in the Hahn Hall of Administration. Furnishing these rooms is estimated to cost \$7,000 each.

Space for a "war room" dedicated to each case for storing witness/deposition notebooks, frequently used documents and engineering plans and for meeting with witnesses and the expert team would require at least one additional conference room of the size and space cost described above for conference rooms.

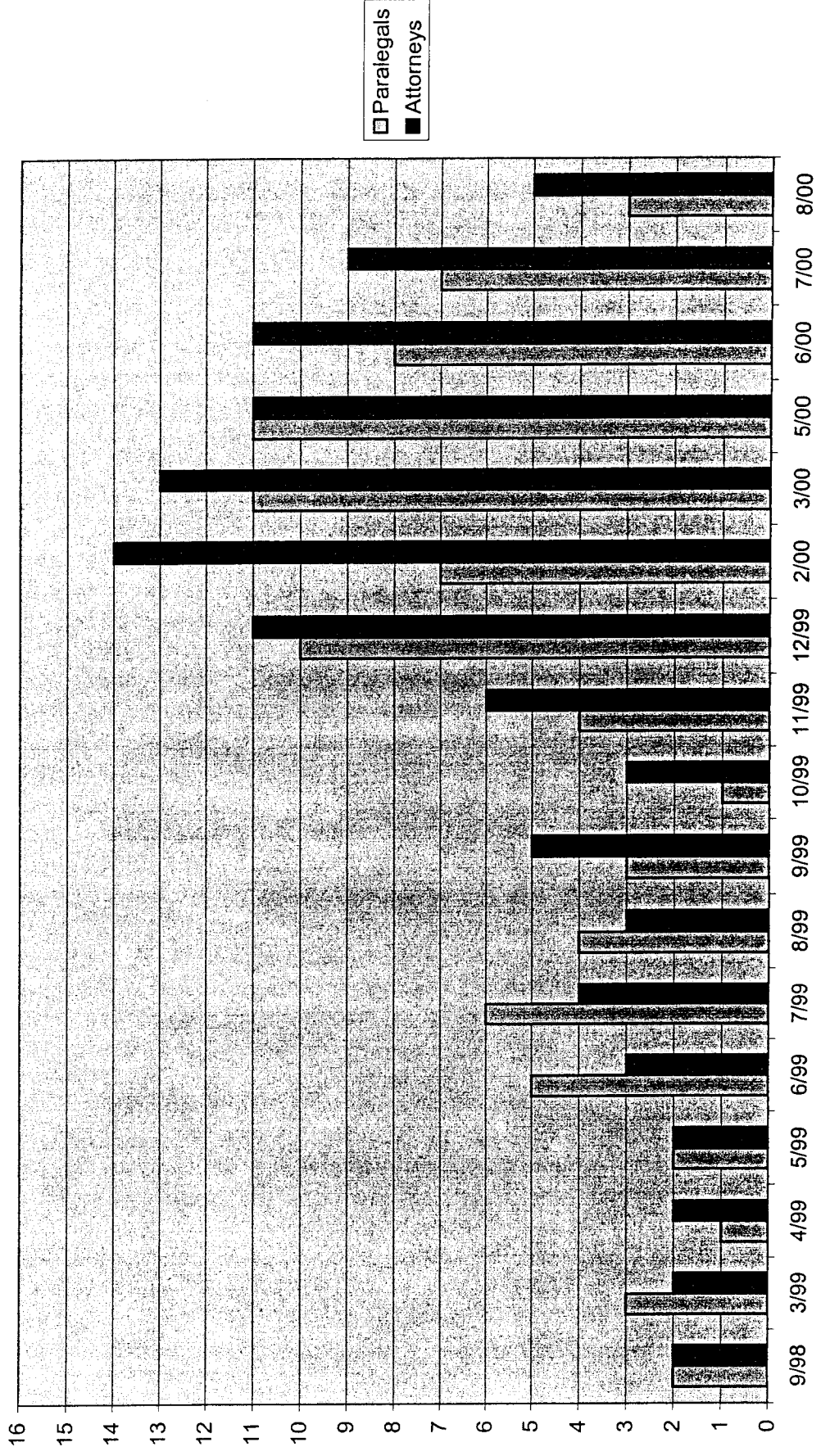
Computer hardware for litigation documents would require two additional file servers at an estimated costs of \$8,000-\$15,000 each and space to house each server.

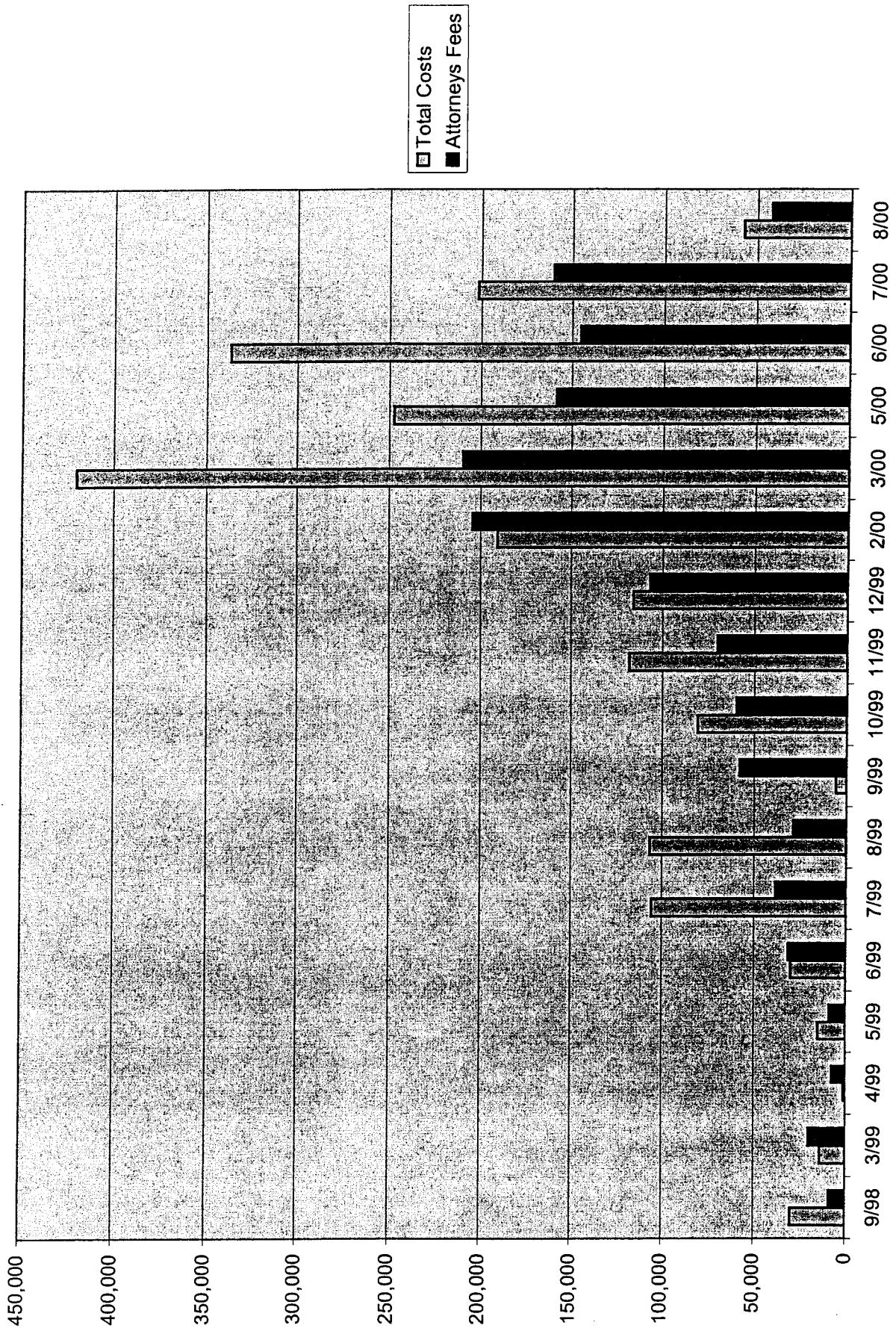
### Conclusion

The fact that additional needed space is not currently available in the Kenneth Hahn Hall of Administration and locating personnel at a satellite location would not be optimal for coordination with the HOA office staff supports the decision to contract for such litigation services. A significant investment in space, equipment and personnel for a workload which fluctuates supports a decision to contract out this litigation.

# Newberg-Dick v. County of Los Angeles

## Level of Effort





# **ANALYSIS OF REDUCTION OF RELIANCE ON OUTSIDE COUNSEL**

## **IN LAW ENFORCEMENT AND GENERAL LITIGATION**

### **Summary**

As discussed in more detail below, the following considerations support the decision to maintain the current process for determining the allocation of cases between in-house and outside counsel in the areas of law enforcement and general liability litigation:

- **Effective Legal Representations** - The current balance of cases assigned to in-house counsel and outside counsel allows us to provide timely and effective legal representation *as well as* to advise and counsel the Board of Supervisors and other public officers and departments.
- **Personnel considerations** - Additional attorneys, paralegals, and support staff would be needed to handle this additional litigation in-house.
- **Space considerations** - Additional space to house the attorneys, paralegals, and support staff would be required.
- **Effect on litigation outcomes** - Because we do not currently have the space for more attorneys, paralegals, and support staff, in-house caseloads would have to be increased thereby decreasing the quality of litigation and litigation results.

### **Effective Legal Representation**

Most of the law enforcement cases that are contracted out are either "nuisance" cases or "major" litigation. "Nuisance" cases are those in which the plaintiff acts as his own attorney (in pro per) and/or those suits that have no merit and are frivolous. Many times, nuisance cases take numerous hours to resolve and the handling attorney spends countless hours dealing with unintelligible and meritless motions and making numerous court appearances. Our in-house attorneys' time is better spent providing important client services that deserve our attention.

Major litigation cases are those that involve a class action, a shooting, a death, or a serious injury that have the potential to turn into a large jury verdict. The major litigation cases involve numerous hours, depositions, motions, court appearances, experts, and preparation. Some of those cases are kept in-house for various reasons<sup>1</sup> but assigning a certain portion of the cases to outside counsel allows our office not only to provide timely and effective legal

---

<sup>1</sup>/ Some major cases are kept in-house because of the expertise of an in house attorney, the availability of an in-house attorney, and/or for training purposes.

representation in the cases we do retain but to continue to provide advise and counsel to the Board and other public officers and departments.

In addition, assigning a portion of the cases to outside counsel has definite cost advantages.<sup>2</sup> For instance, a recent wrongful death case that was handled by a Senior Deputy County Counsel and went to trial required 1,442 hours of attorney time. At \$167 per hour, the attorneys fees generated were \$240,814. Had that same case been handled by outside counsel at the rate of \$120, the attorney's fees would have been \$173,040, a savings of nearly \$70,000. Conversely, a pending class action handled by outside counsel has required approximately 4,700 attorney hours or \$564,000 to date. That case handled in-house would have generated attorney's fees in the amount of \$784,900, a difference of \$220,000.

A variety of other cases ranging from auto liability to foster care cases, and some employment cases as well as premises liability cases, are handled by outside counsel through our third party administrator Carl Warren and Associates. Also, our medical malpractice cases are handled by outside counsel through our third party administrator Octagon. These cases are routinely handled by panels of attorneys with the appropriate expertise and at an hourly rate that has also been very cost effective. Four general liability cases recently resolved at an average of 556 attorney hours per case or \$58,380 per case. If those cases had been handled in-house, the cost per case would have ranged from \$71,724 for a Deputy County Counsel to \$92,852 for a Senior Deputy.

While at first blush it might appear that the County should assign more cases to outside counsel because of their lower billing rates, there are other costs associated with those cases to consider. For example, the County Counsel's office has a risk management team dedicated to full time supervision of Octagon Risk Management. The risk management team consists of two Senior Deputy County Counsels with nearly 50 years of litigation experience between them and a management specialist with over 20 years of risk management experience.

Similarly, the Carl Warren panel is supervised by two Senior Deputies, one with over 25 years of experience and the other with over 17. Further, the Sheriff's panel is supervised by two Senior Deputies with over 30 years of legal experience between them. In addition, all of these areas of litigation are supervised by an Assistant County Counsel who manages the entire General Litigation Division.

---

<sup>2/</sup> The attorneys on the Sheriff's panel receive \$120 per hour. The attorneys on the Carl Warren panel receive \$105 for all cases except employment cases for which they receive \$120. The attorneys on the Octagon panel receive \$115 per hour. By contrast, the billing rate for a Senior Deputy County Counsel is \$167 per hour and \$129 for a Deputy County Counsel.

## **Personnel and Space Considerations**

Currently, there are approximately 237 law enforcement cases and 366 general litigation cases contracted out. Additional attorney's, paralegals and support staff would be needed to handle this additional litigation in-house. Currently, there is no space for additional attorney and paralegal workspace.

If additional space could be obtained in the Kenneth Hahn Hall of Administration, the estimated cost for each additional Deputy County Counsel is \$146,400 per year and \$173,200 for each additional Senior Deputy. Each attorney office and paralegal bay would be approximately \$3,000 per month. Additional furnishings for each attorney and paralegal are an estimated one-time cost of \$6,000 and \$4,500 for each. Costs for computers, printers, utilities, office supplies are estimated to be \$1,000 per month for each attorney and \$500 per month for each paralegal.

## **Effect on Litigation Outcomes**

Because we do not currently have additional space for attorneys, paralegals, and support staff, handling more cases in-house would require our attorneys to dramatically increase their caseloads. There are currently 21 attorneys in the General Litigation Division, 16 of whom handle cases.<sup>3</sup> Those 16 attorneys handle the 72 Law Enforcement lawsuits and 371 general litigation cases that have been assigned in-house for an average caseload of 28 cases per attorney. Any further increase in caseloads would negatively impact the litigation outcomes in the increased caseloads.

There are approximately 1767 work hours in the calendar year and the average case is closed in approximately 18 months. 18 months of work hours would therefore be 2650 hours. A sampling of 20 cases that were recently resolved in the General Litigation Division showed that the number of hours worked on each case ranged from a low of 125 hours to a high of 2309 hours. The mean number of hours was 640 and the average number of hours was 821<sup>4</sup>. Even if the average number of hours spent on a case was only 125 (the lowest number of hours spent on the sampled cases), 2650 hours (number of work hours in 18 month period) divided by 125 (number of hours spent on a case) is 21.2 cases per attorney. Right now, at an average caseload of 28, our attorneys are already exceeding the optimum caseload and outside counsel are handling the overflow.

Our attorneys are currently obtaining excellent results while maintaining a very positive relationship with the client departments. Any increase in caseloads would put an obvious strain on the attorney's ability to keep up the quality of legal service and maintain the hands-on relationship with the client.

---

<sup>3</sup>/The Division Chief, the 2 attorneys supervising the med-mal cases, the attorney in the Sheriff's Legal Advisory Unit, and the claims/bailbond supervisor do not have active caseloads.

<sup>4</sup>/Because the sampling of cases was not truly random, the mean and average numbers are not wholly accurate, but used here for illustrative purposes.